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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Monica R. Nassif, et al. Examiner: Lauren Wells
Serial No. 09/659,502 Group Art Unit: 1617
Filed: September 11, 2000 Docket No. 497.001US1
Title: AROMATHERAPEUTIC ENVIRONMENTAL SYSTEM

MAIL STOP APPEAL BRIEF - PATENTS


Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The following documents are hereby submitted:

- ☒ Appeal Brief to the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office (three copies)
- ☒ Authorization to withdraw \$165.00 to cover Appeal Brief Fee of a small entity
- ☒ Transmittal Sheet
- ☒ Return postcard

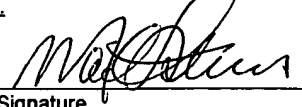
Please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers if an additional extension of time is deemed necessary by the Office. Authorization is hereby given to charge Deposit Account Number 50-1391 if such additional extension is necessary.

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on September 7, 2004.

Mark A. Litman
Name


Signature



BRIEF ON APPEAL
Serial Number: 09/ 659,502
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S/N 09/569,502

PATENT

S/N 09/659,502

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Monica Nassif et al.	Examiner:	L. WELLS
Serial No.:	09/659,502	Group Art Unit:	1617
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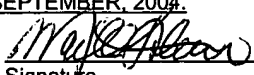
Sir:

This Brief on Appeal is being submitted in triplicate in response to the Office Action mailed on April 7, 1004 finally rejecting claims 1-11, 13-21, 26-28, and 31. Claims 29, 30 and 32 are withdrawn from consideration as directed towards a non-elected invention.

The U.S. Patent and Trademark Office is hereby authorized to debit any costs and fees associated with this Petition to Deposit Account No. 50-1391. Appellants request a personal appearance before the Board of Appeals and will pay the required fee upon receipt of the Examiner's Answer.

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: MAIL STOP: APPEAL BRIEF - PATENTS, P.O. BOX 1450, Commissioner for Patents, Alexandria, VA 22313-1450 7 SEPTEMBER, 2004.

Mark A. Litman
Name


Signature

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BRIEF ON APPEAL

Serial Number: 09/ 659,502

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REAL PARTY IN INTEREST

The real party in interest in this Appeal is the assignee of the full right, title and interest in this Application, The Caldrea Company, having a place of business at 420 N. 5th St., Ford Centre, Suite 1030, Minneapolis, MN 55401. a small entity corporation organized under the Laws of the State of Minnesota.

RELATED APPEALS AND INTERFERENCES

The Appellant(s), the legal representative prosecuting this application and Appeal, and the assignee are not aware of any Appeals or Interferences that will directly affect or have a bearing on the Board's of Patent Appeals and Interferences decision in this pending Appeal.

BRIEF ON APPEAL

Serial Number: 09/ 659,502

Filing Date: September 11, 2000

Title: AROMATHERAPEUTIC ENVIRONMENTAL SYSTEM

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Docket No.: 497.001US1

STATUS OF CLAIMS

Claims 1-11, 13-21, 26-28, and 31 have been finally rejected. No claims have been allowed. Claims 29, 30 and 32 have been withdrawn from consideration as directed to a non-elected invention.

STATUS OF AMENDMENTS

No Amendment was filed under 37 CFR 1.116 after final rejection, all amendments have been entered without objection to the presence of new matter or lack of enablement.

SUMMARY OF THE INVENTION

Studies have shown that ambient odors can reduce anxiety and change emotions. Studies describe patients that were conditioned to associate a certain odor with a relaxed state. Patients were able to reduce the severity of their anxiety episodes by inhaling their designated fragrance (Schiffman, S., *Fragrance: The Psychology and Biology of Perfume*, Van Toller and Dodd (eds.), London: Elsevier Applied Science, 1992, pp. 57-58). In a study by Hirsch on the relationship of odors and perceptions of room size, the subjects perceived the size of a small booth to be larger after inhaling a scent similar to green apples. Hirsch speculated that the green apple scent reduced the anxiety of being enclosed in a small space and thereby increased the perceived room size (Hirsch, et al., *Manuscript 1994: 2*). The effects of aromatherapy have therefore been documented. (Page 3, line 22 – Page 4, line 10).

There are many different disclosures of methods and compositions for the delivery of natural materials for the purposes of aromatherapy. These methods usually encompass the ingestion (eating or drinking) of the natural material (fruit, grain, leaf, oil, juice, or substance or distillate of the material), burning of the material to provide the actives to the ambient environment, applying a composition containing at least the active ingredients from the natural material directly to the subject (e.g., perfume, lotion, cream, soap, abrasive composition, etc.), or otherwise placing the composition in a location or system (e.g., a vaporization system) that would provide an active amount of the natural material to the ambience of the location. This may be as direct a targeting of an environment as a car air freshener. (Page 4, lines 1-10)

A liquid household product and series of products are provided that have a functional application on a surface to which it is applied and after appropriate use of that household product on the surface, residual essential oils in the household product remain on the surface and provide aromatherapeutic content to an ambient environment around

that surface. To that end, a household composition (for non-limiting examples, selected from the group consisting of surface cleaners (countertop cleaners, ceramic cleaners, glass cleaners, wood cleaners, window cleaners, carpet cleaners, wax cleaners and the like), antistatic compositions (sprays, liquids, wipes, etc.), dish soaps and dish cleaners, ironing liquids, wood finishes, anti-stain compositions, and the like. The product comprises the household product carrier base, with the essential oil as both an active agent (e.g., antibacterial agent) and as an aromatherapeutic ingredient (that persists for an effective amount of time after application of the product to an inanimate surface). (Page 11, lines 16-25) The use of a series of products providing the same therapy avoiding sensory overload or conflict of therapies. (Page 22, lines 19-27)

The aromatherapeutic compositions are applied directly to surfaces to provide a persistent therapy source. (Page 21, lines 8-22)

ISSUES

1) A first issue exists under 35 USC 112, second paragraph with respect to the definiteness of the claims. In essence the rejection asserts that the first use of the legal term “comprising” in a claim effectively excludes the ability of a claim to be further limited with respect to specific ingredients by the use of the terms “consisting essentially of” or “consisting of” when those terms are applied to specific ingredients. The issue is whether or not a claim may be so limited **and be understood by one skilled in the art.** There are separate rejections of claims 1-21 and 26-32 (erroneous numbering as claims 12, 29 and 30 are not being examined) for the use of consisting essentially of and claim 31 for using consisting in the manner described.

2) A second issue exists as to whether Cheung et al. (U.S. Patent No. 6,177,388) anticipates claims 1-2, 4-21, 26-28 and 31, even though limitations present in the claims exclude ingredients necessary to the performance of the technology and formulation of materials described by Cheung et al.

3) A third issue is whether claim 21 is anticipated by Elliott (U.S. Patent No. 5,620,695) when the reference is limited to compositions for treating minor skin irritations and does not disclose the limitation of “...a separate ingredient that effects a household function selected from the group consisting of surface cleaning, starching, polishing and wood finishing.” An issue is whether this recitation is merely “an intended use” or provides a material limitation to the claim.

4) A fourth issue is whether or not claims 1-2, 4-21, 26-28 and 31 are unpatentable under 35 USC 103(a) as obvious over Cheung et al. (*supra*), with no teaching from any secondary references provided. An issue is whether it is obvious to remove an essential ingredient of Cheung et al. without any prospective benefit from that removal.

5) A fifth issue is whether Claims 1-2, 4-20, 26028 and 31 are unpatentable under 35 USC 103(a) over Ferguson et al. (U.S. Patent No. 6,045,813) when the claims as properly interpreted exclude an essential component (the abrasive shell) of Ferguson et al.

6) A sixth issue is whether Claim 3 is unpatentable under 35 USC 103(a) over Ferguson et al. (U.S. Patent No. 6,045,813) further in view of Durbut et al. (U.S. Patent No. 6,022,839) when the claims as properly interpreted exclude an essential component (the abrasive shell) of Ferguson et al. and Durbut et al. does not correct that deficiency.

GROUPING OF CLAIMS

Solely for the purposes of expediting this Appeal and complying with the requirements of 37 C.F.R. 1.192(c)(7), the following grouping of claims is presented. This grouping is not intended to constitute any admission on the record that claims within groups may or may not be independently asserted in subsequent litigation or that for any judicial determination other than this Appeal, the claims may or may not stand by themselves against any challenge to their validity or enforceability.

1) Under the rejections asserted through 35 USC 112, second paragraph with respect to the definiteness of the claims:

Claim 26 shall stand alone under this issue as that claim does not depend from claim 1 and does not contain both the “comprising and” “consisting essentially of” language.

Claims 1-11, 13-21, and 27-28 shall stand or fall with the patentability of claim 1 under this issue.

Claim 32 shall stand or fall by itself under this issue, as the rejection has separately treated this claim as containing “consisting” rather than “consisting essentially of.”

2) A second issue exists as to whether Cheung et al. (U.S. Patent No. 6,177,388) anticipates claims 1-2, 4-21, 26-28 and 31, even though limitations present in the claims exclude ingredients necessary to the performance of the technology and formulation of materials described by Cheung et al.

Claims 1-2, 4-21 and 26-28 shall stand or fall with the patentability of claim 1 under this issue.

Claim 31 shall stand or fall by itself, this claim being further limited by the terminology “consisting.”

3) A third issue is whether claim 21 is anticipated by Elliott (U.S. Patent No. 5,620,695) when the reference is limited to compositions for treating minor skin irritations and does not disclose the limitation of "...a separate ingredient that effects a household function selected from the group consisting of surface cleaning, starching, polishing and wood finishing." An issue is whether this recitation is merely "an intended use" or provides a material limitation to the claim.

Claim 21 shall stand or fall by itself under this issue.

4) A fourth issue is whether or not claims 1-2, 4-21, 26-28 and 31 are unpatentable under 35 USC 103(a) as obvious over Cheung et al. (*supra*), with no teaching from any secondary references provided. An issue is whether it is obvious to remove an essential ingredient of Cheung et al. without any prospective benefit from that removal.

Claims 1-2, 4-21 and 26-28 shall stand or fall with the patentability of claim 1 under this issue.

Claim 31 shall stand or fall by itself, this claim being further limited by the terminology "consisting."

5) A fifth issue is whether Claims 1-2, 4-20, 26-28 and 31 are unpatentable under 35 USC 103(a) over Ferguson et al. (U.S. Patent No. 6,045,813) when the claims as properly interpreted exclude an essential component (the abrasive shell) of Ferguson et al.

Claims 1-2, 4-21 and 26-28 shall stand or fall with the patentability of claim 1 under this issue.

Claim 31 shall stand or fall by itself, this claim being further limited by the terminology "consisting."

6) A sixth issue is whether Claim 3 is unpatentable under 35 USC 103(a) over Ferguson et al. (U.S. Patent No. 6,045,813) further in view of Durbut et al. (U.S. Patent No.

6,022,839) when the claims as properly interpreted exclude an essential component (the abrasive shell) of Ferguson et al. and Durbut et al. does not correct that deficiency.
Claim 3 shall stand or fall by itself under this issue.

ARGUMENT

Rejections Under 35 U.S.C. 112, Second Paragraph

Claims 1-11, 13-21 and 26-28 Stand or Fall with the Patentability of Claim 1 under This Issue

The sole issue not addressed by amendment is the issue regarding the assertion that Claims 1 and 27 contain conflicting limitations of “comprising” and “consisting of.” The terms are not in conflict, and the basis of the non-conflict can be seen by appropriate parsing of the claims. The first important grammatical appreciation to be made is the fact that “consisting of” and “consisting essentially of” appear in two different locations. The first appearance of “consisting of” is merely the introduction to the Markush Group, and it is not believed that is the source of error. The second appearance of the term “consisting essentially of” is in the more traditional legal sense, limiting the content of **the solvents** in the system to only water and alcohol, excluding any other solvent that provides any substantial functional effect. That is, no solvent that causes or contributes to blooming, no cosolvent for other ingredients, or the like can be present. Other materials, such as fragrances, UV absorbers, thickening agents, and the like, are not excluded from the composition, but any other solvent for the oils is excluded. This is not a contradiction in the use of the comprising language for the liquid composition. Other materials may be present, except for solvents for the oil. This language is clear and readily understandable by one skilled in the art.

By making these arguments on the record, Applicant has made an estoppel against any other interpretation of the language, so these arguments also define the term in this manner and prevent the PTO from asserting that some other conflicting interpretation can be made. The claims allow for any liquid composition (meeting the substantive required component content) to be used as long as there are no more than two solvents in the system for the oil, and where those solvents may be only water or an alcohol. Any other solvent that makes any substantive functional contribution is excluded by these claims.

As noted above, there are two “consisting essentially of” limitations in the claims that apply to different limiting effects. The fact that the first limitation is one that is commonly used in the patent claiming environment (the use or even required use of “consisting of” as an introduction to a Markush group is clear evidence that the use of such terms in U.S. Patent claims is both understandable to one skilled in the art and in common usage in U.S. Patent claiming practice.

A problem with the rejection is that the rejection fails to analyze the claim from the perspective of one skilled in the art, but rather attempts to address the claim from an exclusively linguistic perspective of analysis. This is both procedurally and legally in error. One skilled in the art reading this claim would understand that the composition, because of the terminology “comprising” would allow for the presence of many if not all things, unless something is specifically excluded from the claims by another limitation. That is exactly what has been done in these claims. The claim would be understood by one skilled in the art as effectively stating:

“A method for providing aromatherapy to persons or animals within an ambient environment comprising directly applying a composition consisting of a liquid composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, dish washing with soaps, and ironing clothes, the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, **EXCEPT THAT** the solvents in said liquid composition consisting essentially of materials selected from the group consisting of water and alcohols.

What this means is that the composition may contain almost anything else as long as there are no solvents other than water and alcohols present in the composition. This is no

less understandable than the use of the range of ingredients (i.e., the 0.1 to 20%) to exclude lesser amounts or greater amounts of oil (which according to the term “comprising” could be additionally present).

The claim when read in the reasonable light of knowledge of one skilled in the art and commonly accepted linguistic practices is easily understood by one skilled in the art. It is actually impossible to misconstrue the meaning of this language and as such is clear on its face, even to one not skilled in the art.

The rejection is in error as a matter of law and as a matter of fact.

Claim 31 stands or falls by itself

Similarly for the recitation of “applying...consisting of a liquid composition,” even with comprising recited elsewhere in the claim, the claim requires that the composition applied to the surface be only liquids. Suspended or dispersed solids cannot be present. Dissolved solids may be present, as they are no longer solids, but part of a liquid composition. This meaning is also clear to one skilled in the art. Ferguson requires a solid capsule to be present. This is excluded by this language both by this limitation and by the direct application recitation.

Claim 26 Stands or Falls by Itself under This Issue

Claim 26 does not contain the language to which objection has been raised. This rejection is improper on its face.

2) Claims 1-2, 4-21, 26-28 and 31 have been rejected under 35 USC 102(e) as anticipated by Cheung et al. (U.S. Patent No. 6,177,388).

Claims 1-2, 4-21 and 26-28 shall stand or fall with the patentability of claim 1 under this rejection.

Claim 1 recites:

A method for providing aromatherapy to persons or animals within an ambient environment comprising applying a liquid composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, foreign matter removal, moisturizing, dish soaps, and ironing liquids, the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, solvents in said liquid composition consisting essentially of liquids selected from the group consisting of water and alcohols.

The Cheung reference specifically requires at least one solvent in addition to water or alcohol (if alcohol is one of the organic solvents used). Cheung specifically states:

“The concentrate compositions of the invention further comprise at least alkyl diphenyl solvent.” and

“The alkyl diphenyl solvent may be present in the concentrate compositions in amounts of from about 0.001% by weight to up to about 20% by weight, preferably about 0.01-10% by weight, most preferably in amount of between 0.1-8% by weight.

The inventors have found that with the presence of the alkyl diphenyl solvent in the present formulations, it is preferable to have present in the formulation the higher aliphatic primary or secondary alcohol mentioned herein. Such higher aliphatic primary or secondary alcohols aid in the

dissolution of the alkyl diphenyl solvents in the concentrate compositions, ensuring that the clarity of the concentrate formulation is maintained, which is especially important from a consumer standpoint. When used, the higher aliphatic primary or secondary alcohols are present in the concentrate formulations in amounts of from about 0.001% wt. to about 5% wt., preferably from about 0.01% wt. to about 3% wt., and more preferably from about 0.1% wt. to about 2% wt. %."

As Cheung requires additional solvents beyond the possibility of water and alcohol, and the present claims exclude any solvent other than water and alcohol, Cheung does not anticipate the claims. Cheung requires the presence of this additional solvent to provide the properties of his composition. It is not anticipation to show a composition that is excluded by the claims.

It is important to note that Cheung et al. require the presence of this additional "solvent" for an essential function to the practice of the invention. As this material is present in an amount necessary to provide this essential function in Cheung et al., the presence of that material is specifically excluded by the limitation of the solvents by the phrase "consisting essentially of." It is believed that the rejection under 35 USC 112, second paragraph 9above) is motivated by a desire to maintain this reference as viable by attacking a limitation that actively excludes the efficacy of the reference. This is not believed to be commensurate with public policy for the U.S. Patent and Trademark Office.

Claim 31 Stands or Falls by itself under This Rejection

Claim 31 further limits claim 1 language by reciting that the solvent consists of water or alcohol. As this language also excludes the additional solvent materials of the reference, this claim is patentable.

Claim 21 has been rejected under 35 USC 102(b) as anticipated by Elliott (U.S. Patent No. 5,620,695).

Claim 21 shall stand or fall by itself under this Issue.

This reference is limited in its disclosure to compositions for treating minor skin irritations. There is absolutely no basis in the reference for finding a teaching of the limitation recited in Claim 3 of "...a separate ingredient that effects a household function selected from the group consisting of surface cleaning, starching, polishing and wood finishing."

The rejection asserts that this recitation is merely "an intended use," implying that it does not provide a material limitation to the claim. That assertion is in error. The claim specifically requires an ingredient in addition to the oil. The claims describes that oil in terms that are in compliance with 35 USC 112, first and second paragraphs, and the actual limitation must be considered. This limitation is not an intended use, but is a positive limitation in the claim. This limitation is not taught by Elliot et al. and the rejection is therefore clearly in error.

Claims 1-2, 4-21, 26-28 and 31 are unpatentable under 35 USC 103(a) as obvious over Cheung et al. (supra), with no teaching from any secondary references provided.

Claims 1-2, 4-21 and 26-28 Shall Stand or Fall with Claim 1 under This Issue

An issue is whether it is obvious to remove an essential ingredient of Cheung et al. without any prospective benefit from that removal.

The arguments presented above with respect to the rejection of these claims under 35 USC 102(e) over this reference are incorporated herein as a starting point for this argument. Additionally it is noted that the additional solvent of Cheung et al. is an essential part of the described invention, and it is not obvious to remove an ingredient

that is essential to the practice of the invention. It is also noted that the composition of Cheung et al. would possibly have to be further modified as a result of any attempt to remove the essential third solvent ingredient excluded by claim 1. It is noted that Cheung et al., in order to combine the solvent and oil materials required, also requires:

“The concentrate compositions of the invention further comprise at least one botanical oil solubilizing surfactant. Particularly useful as the botanical oil solubilizing surfactant are nonionic surfactant compositions based on amine oxides.”

The removal of the additional solvent would be expected to have an unidentified impact on the requirement for and amount of this additional required ingredient which ties the oil to the other solvents, and possibly specifically to the alkyl phenyl solvent essential to Cheung et al. and excluded by the language of the claims on appeal. It cannot be obvious to remove an essential ingredient merely to meet the limitations of a claim, and the non-existing impetus for such removal is further taught against by the lack of expectation of benefits and the possible complications in other ingredients deemed essential in the teachings of the Cheung et al. reference.

Claim 31 Stands or Falls by itself under This Rejection

Claim 31 further limits claim 1 language by reciting that the solvent consists of water or alcohol. As this language also excludes the additional solvent materials of the reference, this claim is patentable.

Claims 1-2, 4-20, 26-28 and 31 have been rejected as unpatentable under 35 USC 103(a) over Ferguson et al. (U.S. Patent No. 6,045,813).

Claims 1-2, 4-21 and 26-28 shall stand or fall with the patentability of claim 1 under this issue.

Ferguson et al. shows an encapsulated medium that is applied with active cleaning ingredients or other functional ingredients in a friable microcapsule. A liquid with the microcapsules dispersed therein are applied to a surface, and the capsules must be broken to cause contact of the active ingredients with the surface. There is no **direct** application of the liquid composition to the surface. Direct mean exactly that – application of the material directly, without intermediate steps (such as rupturing of shells and using shells as an abrasive) to apply the material to a surface. That recitation specifically excludes the practice of Ferguson et al. Applicants would have likewise been willing to accept language consistent with “non-encapsulated” (for which conception is shown in the specification and the examples, where no capsules are used), but would have used that term only upon pre-agreement by the Examiner that there is no issue of lack of antecedent basis under 35 USC 112, first or second paragraphs in the use of that language. The previous amendment of “directly” applying the liquid is, however, sufficient to exclude the compositions of Ferguson et al. This reference is not anticipatory of the subject matter of the claims.

The recitation of directly applying is a substantive limitation in the claim and cannot be ignored. The process of Ferguson clearly requires indirect application of active materials, and the composition of those active materials is defined by the needs of an encapsulation system. The encapsulation system of Ferguson is specifically required to separate the active ingredients from the carrier liquid, which is not necessary, required, claimed or allowed by the claims on Appeal defining the present invention..

Additionally, the incidental disclosure in Ferguson of materials that happen to be aromatherapeutic ingredients (e.g., the 0.1% fill composition of Chamomile extract in Table 7) shows the use of this component below the levels recited in the claims.

Although the claims on Appeal require 0.1% of the liquid composition directly applied to the surface, Ferguson shows such secondary ingredients (as part of the fill in the capsules) as 0.1% of the fill, which is then dispersed in a carrier. Therefore, even if the

fill of Ferguson contained concentrations as recited in the claims, those concentrations are highly diluted upon indirect application requiring breakage of the capsules. (See column 9, line 14 through column 10, line 29. The bead comprises 0.5% of the total composition and the chamomile extract is 0.1% of that capsule, indicating a usage level of 0.005%, well below the minimum of 0.1% recited in the claims.

The range of “botanicals described by Ferguson is stated on column 4, lines 1-10 as 0.1-1% as the capsule fill composition (not the total composition of the composition). With the beads as a maximum amount of 2% of the composition (column 4, lines 11-15), the botanicals would therefore constitute a maximum of 2.0% x 1% or 0.02%, well below the minimum recitation of 0.1% recited in the claims. Therefore, even if the disclosure of Ferguson is erroneously interpreted as “direct application,” the concentration of applied materials would be outside the scope recited in the claims. Ferguson cannot anticipate the claimed invention.

Additionally, the method claims now emphasize that a composition consisting of a liquid composition is applied to surfaces. Therefore the claims clearly exclude the solid shells required by Ferguson. The claims cannot be obvious from the teachings of Ferguson et al. Both the concentration requirement and the liquid requirement of the composition is not shown by Ferguson.

Claim 31 shall stand or fall by itself, this claim being further limited by the terminology “consisting.”

This claim, as argued before, clearly further limits the composition of the solvent materials.

Claim 3 has been rejected as unpatentable under 35 USC 103(a) over Ferguson et al. (U.S. Patent No. 6,045,813) further in view of Durbut et al. (U.S. Patent No. 6,022,839).

Claim 3 shall stand or fall by itself under this issue.

As noted above, Ferguson fails to teach essential limitations recited in the claims. The claims on Appeal as properly interpreted exclude an essential component (the abrasive shell) of Ferguson et al., which also fails to disclose the recited amount of oil in the composition. Durbat is cited only to show the specific type of surfaces cleaned. Durbat et al. does not correct those deficiencies. The rejection is clearly in error.

CONCLUSION

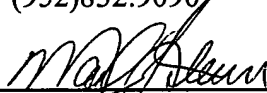
All rejections of record have been shown in detail to be in error. The rejection should be reversed and all claims should be indicated as allowable.

Applicants believe the claims are in condition for allowance and request reconsideration of the application and allowance of the claims. The Examiner is invited to telephone the below-signed attorney at 952-832-9090 to discuss any questions that may remain with respect to the present application.

Respectfully submitted,
MONICA NASSIF et al.
By their Representatives,
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Date: 7 September 2004

By



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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Box: APPEAL BRIEF - PATENTS, P.O. BOX 1450; Commissioner for Patents, Alexandria, VA 22313-1450 on SEPTEMBER 7, 2004.

Name: Mark A. Litman


Signature

APPENDIX - THE CLAIMS ON APPEAL

1. (PREVIOUSLY PRESENTED) A method for providing aromatherapy to persons or animals within an ambient environment comprising directly applying a composition consisting of a liquid composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, dish washing with soaps, and ironing clothes, the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, the solvents in said liquid composition consisting essentially of materials selected from the group consisting of water and alcohols.
2. (ORIGINAL) The method of claim 1 wherein the household function comprises cleaning of an inanimate surface.
3. (ORIGINAL) The method of claim 1 wherein the household function is selected from the group consisting of wood cleaning, glass cleaning, ceramic cleaning, metal cleaning, and composite cleaning.
4. (ORIGINAL) The method of claim 1 wherein the essential oil is an antibacterial agent.
5. (ORIGINAL) The method of claim 1 wherein the liquid composition is free of any antibacterial agents other than the essential oil or essential oil and alcohol.

6. (ORIGINAL) The method of claim 2 wherein the liquid composition is free of any antibacterial agents other than the essential oil or essential oil and alcohol.
7. (ORIGINAL) The method of claim 3 wherein the liquid composition is free of any antibacterial agents other than the essential oil or essential oil and alcohol.
8. (ORIGINAL) The method of claim 4 wherein the liquid composition is free of any antibacterial agents other than the essential oil or essential oil and alcohol.
9. (PREVIOUSLY PRESENTED) The method of claim 5 wherein the essential oil is selected from the group consisting of as sandalwood oil, citronella oil, ylang ylang oil, neroli oil, bergamot oil, lemon oil, lavender oil, sage oil, rosemary oil, peppermint oil, eucalyptus oil, verbena oil, citronella oil, cajuout oil, salvia oil, clove oil, citrus oil and mint oil combinations, chamomille oil, costus oil, labdanum oil, broom extract, carrot seed extract, jasmine extract, mimosa extract, narcissus extract, olibanum extract, and rose extract.
10. (PREVIOUSLY PRESENTED) The method of claim 1 wherein the essential oil is selected from the group consisting of as sandalwood oil, citronella oil, ylang ylang oil, neroli oil, bergamot oil, lemon oil, lavender oil, sage oil, rosemary oil, peppermint oil, eucalyptus oil, verbena oil, citronella oil, cajuout oil, salvia oil, clove oil, citrus oil and mint oil combinations, chamomille oil, costus oil, labdanum oil, broom extract, carrot seed extract, jasmine extract, mimosa extract, narcissus extract, olibanum extract, and rose extract.
11. (PREVIOUSLY PRESENTED) The method of claim 5 wherein the essential oil is selected from the group consisting of as sandalwood oil, citronella oil, ylang

ylang oil, neroli oil, bergamot oil, lemon oil, lavender oil, sage oil, rosemary oil, peppermint oil, eucalyptus oil, verbena oil, citronella oil, cajuout oil, salvia oil, clove oil, oil, citrus oil and mint oil combinations, chamomille oil, costus oil, labdanum oil, broom extract, carrot seed extract, jasmine extract, mimosa extract, narcissus extract, olibanum extract, and rose extract.

12. (CANCELLED)

13. (PREVIOUSLY PRESENTED) The method of claim 6 wherein the essential oil is selected from the group consisting of as sandalwood oil, citronella oil, ylang ylang oil, neroli oil, bergamot oil, lemon oil, lavender oil, sage oil, rosemary oil, peppermint oil, eucalyptus oil, verbena oil, citronella oil, cajuout oil, salvia oil, clove oil, citrus/mint oil combinations, chamomille oil, costus oil, labdanum oil, broom extract, carrot seed extract, jasmine extract, mimosa extract, narcissus extract, olibanum extract, and rose extract.

14. (ORIGINAL) The method of claim 1 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.

15. (ORIGINAL) The method of claim 5 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.

16. (ORIGINAL) The method of claim 6 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.

17. (ORIGINAL) The method of claim 8 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.

18. (ORIGINAL) The method of claim 9 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.
19. (ORIGINAL) The method of claim 11 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.
20. (ORIGINAL) The method of claim 12 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.
21. (PREVIOUSLY PRESENTED) A household cleaning product for effecting aromatherapy to an ambient environment comprising a liquid composition comprising at least 0.2% by total weight of an antibacterial essential oil and a separate ingredient that effects a household function selected from the group consisting of surface cleaning, starching, polishing, and wood finishing.
22. (CANCELLED)
23. (CANCELLED)
24. (CANCELLED)
25. (CANCELLED)
26. (PREVIOUSLY PRESENTED) A method for providing aromatherapy to persons within an ambient environment comprising directly applying a liquid composition to an inanimate surface to effect a household function selected from the group consisting

of surface cleaning, surface shining, degreasing, cleansing, foreign matter removal, washing dish with soaps, and ironing liquids, the liquid composition comprising only two liquid solvents and an aromatherapeutic concentration of an aromatherapeutic essential oil, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment.

27. (PREVIOUSLY PRESENTED) A method for providing aromatherapy to persons within a room comprising directly applying a composition consisting of a liquid composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, and ironing clothes, the liquid composition having an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the room to effect aromatherapy on persons within the room, the solvents in said liquid composition consisting essentially of water and alcohols.

28. (PREVIOUSLY PRESENTED) The method of claim 27 wherein the liquid composition comprises at least 0.2% by total weight as essential oil.

29. (PREVIOUSLY PRESENTED) The method of claim 27 wherein two separate and different compositions each consisting of a liquid composition having the same aromatherapeutic essential oil are applied to different inanimate surfaces to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing and ironing clothes, each liquid composition having an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household functions, allowing the

same aromatherapeutic essential oil to remain within the room to effect aromatherapy on persons within the room, the solvents in said liquid composition consisting essentially of water and alcohols.

30. (PREVIOUSLY PRESENTED) The method of claim 27 wherein two separate and different compositions each consisting of a liquid composition having the same aromatherapeutic essential oil are applied to different inanimate surfaces to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing and ironing clothes, each liquid composition having an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household functions, allowing the same aromatherapeutic essential oil to remain within the room to effect aromatherapy on persons within the room, the solvents in said liquid composition consisting essentially of water and alcohols.

31. (PREVIOUSLY PRESENTED) A method for providing aromatherapy to persons or animals within an ambient environment comprising directly applying a composition consisting of a liquid composition to an inanimate surface to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing, dish washing with soaps, wood finishing and ironing clothes, the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, the solvents in said liquid composition consisting of materials selected from the group consisting of water and alcohols.

32. (PREVIOUSLY PRESENTED) The method of claim 31 wherein two separate and different compositions each consisting of a liquid composition having the same aromatherapeutic essential oil are applied to different inanimate surfaces to effect a household function selected from the group consisting of surface cleaning, surface shining, degreasing, cleansing and ironing clothes, each liquid composition having an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1 to 20% by weight of the liquid composition, completing the household functions, allowing the same aromatherapeutic essential oil to remain within the room to effect aromatherapy on persons within the room, the solvents in said liquid composition consisting of water and alcohols.